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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1934

No. 670

**FRANK L. SMITH, CICERO L. LINDLY, HAL W.
TREVILLION, ET AL., ETC., APPELLANTS,**

vs.

ILLINOIS BELL TELEPHONE COMPANY

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF ILLINOIS**

FILED AUGUST 11, 1935

(31,302)

(31,393)

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INDEX

	Original	Print
Record from the district court of the United States, southern district of Illinois.....	<i>a</i>	1
Caption.....(omitted in printing) ..	<i>a</i>	1
Bill of complaint.....	1	1
Exhibit "A"—Opinion and order of commission re application of Central Union Telephone Co. for increase in rates.....	14	8
Exhibit "B"—Order of commission making permanent suspension of certain rates of Central Union Telephone Co.....	24	14
Exhibit "C"—Motion for temporary schedule of rates pending entry of final order in cause.....	26	15
Exhibit "D"—Order of commission denying motion for temporary rate schedule.....	27	15
Exhibit "E"—Letter from Illinois Bell Telephone Co. to Illinois Commerce Commission, July 5, 1923.....	29	16
Affidavit of Albert P. Allen.....	30	16
Arthur Perrow.....	34	20

	Original	Print
Affidavit of John R. Turner.....	36	21
U. F. Cleveland.....	41	24
B. C. Lingle.....	43	25
Temporary restraining order.....	46	26
Motion to dismiss.....	49	28
Interlocutory injunction.....	51	28
Bond of interlocutory injunction..(omitted in printing)..	54	29
Argument and submission.....(omitted in printing)..	57	29
Order denying motion to dismiss.....	58	29
Orders on motion to dismiss, etc.....	59	30
Amended motion to dismiss.....	61	30
Order setting aside order defaulting defendants.....	64	32
Judgment	65	32
Petition for appeal.....(omitted in printing)..	66a	
Assignments of error.....(omitted in printing)..	68	
Order allowing appeal.....	71	33
Order extending time.....	72	34
Motion for an extension of time... (omitted in printing)..	74	
Order extending time.....	75	34
Bond on appeal.....(omitted in printing)..	77	34
Præcipe for transcript of record...(omitted in printing)..	79	
Order extending time.....	80	34
Citation and service.....(omitted in printing)..	81	35
Clerk's certificate.....(omitted in printing)..	82	35
Statement of points to be relied upon and designation by appellants of parts of record to be printed.....	83	35
Designation by appellee of additional parts of record to be printed	88	36

[fols. a & b]

[Caption omitted]

[fol. 1] **IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DI-
VISION**

In Equity. No. 388

ILLINOIS BELL TELEPHONE COMPANY, a Corporation, Plaintiff,

vs.

FRANK L. SMITH, CICERO J. LINDLY, HAL W. TROVILLION, WILLIAM J. SMITH, P. H. MOYNIHAN, EDWARD H. WRIGHT, and WILLIAM BURKHARDT, the Persons Constituting the Illinois Commerce Commission of the State of Illinois, and EDWARD J. BRUNDAGE, Attorney General of the State of Illinois, Defendants.

BILL OF COMPLAINT—Filed June 18, 1924

To the Honorable Judges of the District Court of the United States
for the Southern District of Illinois, Southern Division:

Illinois Bell Telephone Company, plaintiff, brings this its bill of complaint against the defendants, Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Edward J. Brundage, Attorney General of the State of Illinois, and for its cause of action alleges:

[fol. 2]

First

The plaintiff is a corporation duly created and existing under and pursuant to the laws of the State of Illinois, with its principal office in the City of Chicago in said State, and during all the times herein referred to, it or its predecessor in ownership, Central Union Telephone Company, a corporation organized under the laws of the State of Illinois, has owned and operated a telephone system in the City of Peoria and Villages of Averyville, Bartonville, East Peoria and vicinity, in the State of Illinois, furnishing telephone service to its subscribers and patrons therein.

That the plaintiff is subject to the jurisdiction of the Interstate Commerce Commission under the Act of Congress entitled "The Act to Regulate Commerce, June 4, 1887," and amendments thereto, and is a common carrier as therein defined.

Second

That the defendants first hereinabove named are the persons constituting the Illinois Commerce Commission of the State of Illinois,

which is an administrative body duly created by the statutes of said State, and they will be hereafter referred to collectively as the Illinois Commerce Commission, or the Commission, and the defendant last named, Edward J. Brundage, is Attorney General of the State of Illinois; that the defendant Frank L. Smith, a member and chairman of the Illinois Commerce Commission, is a citizen and resident of Livingston County, Illinois; that the defendant Cicero J. Lindly, a member of the Illinois Commerce Commission, is a citizen and resident of Bond County, Illinois; that the defendant Hal W. Trovil-[fol. 3] lion, a member of the Illinois Commerce Commission, is a citizen and resident of Williamson County, Illinois; that the defendant William J. Smith, a member of the Illinois Commerce Commission, is a citizen and resident of Lake County, Illinois; that the defendant P. H. Moynihan, a member of the Illinois Commerce Commission, is a citizen and resident of Cook County, Illinois; that the defendants Edward H. Wright and William Burkhardt, member of the Illinois Commerce Commission, are citizens and residents of Cook County, Illinois; and that the defendant Edward J. Brundage, Attorney General of the State of Illinois is a citizen and resident of Sangamon County, Illinois.

Third

That this suit is of a civil nature in equity, and is brought for the purpose of enjoining the defendants from enforcing the collection by the plaintiff of the rates and charges for telephone exchange service to its subscribers and patrons within the City of Peoria and the Villages of Averyville, Bartonville, East Peoria and vicinity, all in the State of Illinois, and hereafter collectively referred to as the Peoria exchange, specified in Rate Schedule "I. P. U. C. 1," and to further restrain said defendants from collecting or attempting to collect any penalties, fines, or forfeitures, either under any statute or otherwise, by reason of the charging and collecting by the plaintiff of higher rates and charges for telephone service in said exchange than in said Rate Schedule "I. P. U. C. 1" specified; that this suit arises under the Constitution and laws of the United States, in that, as plaintiff avers, the rates for telephone exchange service in the said Peoria exchange to which plaintiff is limited by the defendant Commission, to-wit: The said Rate Schedule "I. P. U. C. 1," are confiscatory of plaintiff's property used and useful in furnishing to its subscribers and patrons telephone service in said exchange, and that to compel plaintiff to continue charging the rates and charges provided in said Rate Schedule "I. P. U. C. 1" deprives plaintiff of its property without due process of law, and denies plaintiff the equal protection of the laws, in violation of its rights under the Fourteenth Amendment to the Constitution of the United States.

The amount in controversy in this suit exceed the value or sum of Three Thousand Dollars (\$3,000), exclusive of interest and costs.

Fourth

That on November 28, 1919, the Central Union Telephone Company made effective a certain schedule of rates known as I. P. U. C. 1, for telephone service in the City of Peoria, and the Villages of Averyville, Bartonville, East Peoria and the vicinity, known as the Peoria exchange and hereinafter so referred to, which said schedule of rates so made effective was finally approved by the Public Utilities Commission of Illinois in its order of July 31, 1920, in case No. 9311, a true and correct copy of said order being attached hereto as Exhibit "A," and made a part hereof.

That on or about the first day of April, 1920, the Central Union Telephone Company, an Illinois corporation, then owning and operating the said Peoria exchange, established and filed with the Public Utilities Commission of Illinois, predecessor of the Illinois Commerce Commission, a schedule of rates for telephone service applying to said Peoria Exchange, effective May 1, 1920, designated "Illinois Public Utilities Commission No. 2, cancelling Illinois Public Utilities Commission No. 1" (herein referred to as Rate Schedule "I. P. U. C. 2"); that in said filing said Central Union [fol. 5] Telephone Company complied with all the provisions of law and rules of the Commission; that on the 19th day of April 1920, the said Public Utilities Commission entered an order suspending the effective date of said Rate Schedule until August 29, 1920; that on the 28th day of July, 1920, said Public Utilities Commission entered an order resuspending the effective date of said Rate Schedule until February 26, 1921; that on the 23d day of February, 1921, said Public Utilities Commission entered an order purporting and attempting to suspend the effective date of said Rate Schedule until August 26, 1921; that on the 28th day of July, 1921, the Illinois Commerce Commission, successor to said Public Utilities Commission, entered an order purporting and attempting to suspend the effective date of said Rate Schedule until the 23d day of February, 1922; that various hearings were held by said Commission as to the justice and reasonableness of said Rate Schedule "I. P. U. C. 2," to-wit: On the 12th and 13th days of November, 1920, and on the 3d day of December, 1920, at which hearings said Central Union Telephone Company and its successor in ownership of said exchange, plaintiff, appeared and introduced evidence in support of Rate Schedule "I. P. U. C. 2;" that on the 3d day of December, 1920, Chicago Telephone Company having theretofore acquired certain property of said Central Union Telephone Company, including said Peoria exchange, was substituted in said proceedings for said Central Union Telephone Company; that on or about the 23d day of December, 1920, the name of the Chicago Telephone Company was changed to Illinois Bell Telephone Company, plaintiff herein; that although plaintiff often requested said Illinois Commerce Commission, to set said proceedings for further hearing, said Commission failed and refused to hold further hearings in said proceedings; that on the 31st day of October, 1921, said Illinois Commerce Commission entered an order, served

on plaintiff after November 1, 1921, purporting and attempting to permanently suspend, cancel and annul said Rate Schedule "I. P. U. C. 2," a copy of which order is attached hereto, made a part hereof and marked "Exhibit B;" that on the 2d day of December, 1921, plaintiff applied to said Illinois Commerce Commission for a rehearing of said last mentioned order, which was denied by said Commission on the 20th day of December, 1921.

Fifth

That thereupon plaintiff perfected and prosecuted an appeal to the Circuit Court of Peoria County in said proceedings; that said appeal was finally determined by the order of said Court on April 6, 1922, reversing said order of October 31, 1921, and remanding said cause to said Illinois Commerce Commission for further proceedings therein; that said cause was redocketed with said Commission and that hearings were had by said Commission thereon on the 6th day of June, 1922, and on the 6th day of July, 1922, at which hearings further evidence was introduced by the plaintiff, that a further hearing was held on the 13th day of September, 1922, that on the 16th day of September, 1922, plaintiff filed with said Illinois Commerce Commission its written motion, requesting said Commission to make effective for said Peoria exchange a temporary schedule of rates pending the entry of final order in said cause, a copy of which motion is attached hereto, made a part hereof, and marked "Exhibit C;" that on the 28th day of September, 1922, said Commission entered an order denying the request of plaintiff to make effective a temporary schedule of rates pending final determination of said cause, a copy of which order is attached hereto, made a part [fol. 7] hereof and marked "Exhibit D;" that on the 5th day of July, 1923, plaintiff wrote and sent to said Commission, by United States mail, postage prepaid, a letter calling to the attention of said Commission the delay in the determination of said cause, and further calling to the attention of said Commission the fact that the revenues derived from the operation of said Peoria exchange failed to meet the operating expenses of said exchange, and requesting said Commission to set said cause for early hearing, a copy of which letter is attached hereto as "Exhibit E," and hereby made a part hereof; that notwithstanding said request of plaintiff, and not withstanding the fact that the revenues so derived are insufficient to even pay the cost of operating said exchange, which fact could have been readily verified by the Commission at any time, as the books of the plaintiff were at all times open to its inspection and examination, said Commission has refused and failed, and continues to refuse and fail to continue further in said cause and to determine the issues in said cause, and has refused and failed, and continues to refuse and fail to determine whether or not the rates and charges provided in Rate Schedule "I. P. U. C. 2" are just and reasonable, and at no time has the plaintiff acquiesced or consented to any delay on the part of said Commission.

Sixth

That the said actions and failures to act of said Commission, and its refusal to make effective for said Peoria exchange a temporary schedule of rates pending the determination of said cause as requested by plaintiff, all of which is hereinabove more particularly set forth, has continued in effect, and now continues in effect for said Peoria exchange the rates and charges provided in said Rate Schedule "I. [fol. 8] P. U. C. 1," which rates do not yield a fair return on the fair value at the time of use of the property of the plaintiff used or useful in rendering intrastate telephone service to the subscribers and patrons of the plaintiff in said Peoria exchange, and are insufficient even to pay the cost of rendering telephone service to the subscribers and patrons of the plaintiff in said exchange, whereby plaintiff has suffered and continues to suffer great and irreparable loss, and its property is taken without due process of law, and it is denied the equal protection of the law, in violation of its rights under the Fourteenth Amendment to the Constitution of the United States.

Seventh

That at all the times herein mentioned said plaintiff and its predecessor in ownership of said Peoria exchange, said Central Union Telephone Company, have exercised in the management of said exchange all reasonable economies consistent with adequate and efficient service to its subscribers and patrons; that the net revenues derived by the plaintiff from the operations of said Peoria exchange left available for return, after the payment of operating expenses and taxes, \$46,312.45 for the calendar year 1921; that for the following periods the revenues derived from said operations of said property have not been sufficient to pay said operating expenses and taxes, and have not paid any return on the said property of the plaintiff in said exchange, but have left deficits as follows:

For the calendar year 1922, \$48,458 deficit.

For the calendar year 1923, \$64,953 deficit.

That the plaintiff has been incurring monthly deficits from said operations in said exchange for the several past months of the year 1924, whereby the plaintiff has suffered and continues to suffer great [fol. 9] and irreparable loss and damage, and its property has been taken and continues to be taken without due process of law.

Eighth

That the Public Utilities Commission of Illinois in its said order of July 31, 1920, attached hereto as Exhibit "A," found and determined that the reasonable value of the property used and useful in furnishing telephone service in the Peoria exchange as of June 30, 1919, was \$1,320,000; that the plaintiff and the Central Union Telephone Company, its predecessor in title, expended the sum of \$1,617,533 in net additions to said property from July 1, 1919 up to and

including December 31, 1923; that the original cost to the plaintiff of said property is in excess of \$3,000,000, and that the reproduction cost new of said property is at least the sum of \$4,200,000, including working capital, materials and supplies, and going value; that the present fair value of said property is at least the sum of \$3,800,000, including working capital, materials and supplies and going value.

Ninth

That the fair annual return which the plaintiff is entitled to earn under rates imposed upon it by public authority is an amount equal to not less than eight per cent of the fair value at the time of its use of its property used or useful in the rendition of its telephone service in the said Peoria exchange; that the revenues resulting from the operations of said property in the year ending March 31, 1924, were \$322,000 less than an eight per cent return on the said minimum fair value of said property, and that the schedule of rates set forth in said I. P. U. C. No. 2 would yield additional revenue to the [fol. 10] plaintiff of not to exceed \$190,000, which would leave for return on the said value of said property less than \$172,000, or approximately four and one-half per cent return on said minimum fair value, and less than six per cent return on the cost of said property.

Tenth

That unless the defendants are restrained and enjoined as herein prayed, they will, as plaintiff believes and so alleges, attempt to compel the plaintiff to limit its rates and charges to the rates and charges provided in said Rate Schedule "I. P. U. C. 1," and to enforce the penalties prescribed by the laws of the State of Illinois, and plaintiff, its directors, officers, agents and employees will be deterred and prevented by the threat of said penalties from charging lawful rates in said Peoria exchange, and from charging any rates other than the rates prescribed by said Rate Schedule "I. P. U. C. 1," whereby plaintiff will be forced to submit to the confiscation of its property without due process of law, as aforesaid.

Unless the defendants are restrained and enjoined, as herein prayed, the plaintiff's subscribers in said Peoria exchange will, as plaintiff believes and so alleges, be induced and caused to resist and refuse payment of any rates other than those prescribed in said Rate Schedule "I. P. U. C. 1." The present number of plaintiff's subscribers in said Peoria exchange is more than 15,700, and the present average monthly bill rendered to them is less than \$5.60. Because of the nature of the business of plaintiff, and the fact that the amounts due monthly from its subscribers for telephone service are generally small, it is impracticable for plaintiff to enforce collection thereof by actions of law. Plaintiff has no practical way to enforce collection [fol. 11] of its rates and charges except by cutting off and refusing service for default in payment of its bills rendered monthly therefor, and its subscribers will, as plaintiff believes and so alleges, institute

large numbers of suits in said Peoria exchange to restrain the plaintiff from cutting off and denying service for such non-payment of bills and for damages, and plaintiff will be thereby subjected to endless multiplicities of suits, and that the issues which would be presented in each such suit are presented and should and will be decided in this action.

That the plaintiff has no plain, speedy or adequate remedy at law.

Wherefore plaintiff prays:

First. That the rates prescribed in said Rate Schedule "I. P. U. C. 1" be declared to be in violation of the Constitution of the United States, and to be void;

Second. That the defendants and each of them, and all other persons, be temporarily and permanently restrained and enjoined from any attempt to compel the plaintiff, its officers, agents or employees, to observe or keep in force the rates and charges for telephone service prescribed in said Rate Schedule "I. P. U. C. 1;"

Third. That the defendants and each of them, and all other persons, be temporarily and permanently restrained and enjoined from taking any steps or proceedings against plaintiff, its officers, agents, or employees, to enforce any penalties, fines, forfeitures or any other remedy, either under any statute or otherwise, by reason of the charging and collecting by the plaintiff of higher rates and charges for telephone service in said Peoria exchange than in said Rate Schedule "I. P. U. C. 1" provided; and,

Fourth. That the plaintiff have such other and further relief as may be just and equitable in the premises.

[fols. 12 & 13] May it please your honors to grant unto the plaintiff a writ of subpoena of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendants, Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Edward J. Brundage, Attorney-General of the State of Illinois, commanding them and each of them on a day certain to be named therein and under a certain penalty to be and appear before this honorable court, then and there to answer, but not under oath, answer under oath being hereby expressly waived, all and singular the premises, and to perform and abide by such orders, direction or decree as may be made against them in the premises, and that pending the final hearing of this cause, a temporary restraining order and an interlocutory injunction may be issued as above prayed.

And the plaintiff will ever pray.

Illinois Bell Telephone Company, by Cutting, Moore & Sidley and Philip B. Warren, Its Solicitors. Philip B. Warren, William D. Bangs, of Counsel for Plaintiff.

Duly sworn to by F. O. Hale and Ben B. Boynton. Jurats omitted in printing.

[fol. 14]

EXHIBIT A TO BILL OF COMPLAINT

Case No. 9311

IN RE APPLICATION OF CENTRAL UNION TELEPHONE COMPANY FOR INCREASE IN RATES AT PEORIA

Opinion and Order

On July 22, 1919, the Central Union Telephone Company filed a revised schedule of rates known as I. P. U. C. 1, covering telephone service in Peoria, and vicinity, which schedule it was proposed to make effective August 1, 1919. A hearing on the matter being deemed necessary, the Commission approved an order suspending the effective date until December 20, 1919. On November 28, 1919, the Commission approved an order authorizing the schedule to become effective temporarily until January 31, 1920, and subsequently approved supplemental orders temporarily extending the effective period of the proposed rates pending completion of the necessary investigation. The present rates and those for which final approval is asked, as to the principal classes of service, are as follows:

	Present	Annual rates proposed for final approval and temporarily in effect
Individual line business stations	\$60.00	\$72.00
Two-party line business stations	42.00	60.00
Four-party line business stations	30.00	.....
Individual line residence stations	36.00	39.00
Two-party line residence stations	24.00	30.00
Four-party line residence stations	18.00	27.00
Rural party line stations, business	24.00	33.00
Rural party line stations, residence	18.00	24.00

All interested parties having been duly notified, and due publication of notice of the filing of the revised schedule of rates with the Commission, having been made by the Central Union Telephone Company, the matter came on for hearing before the Commission on November 25, 1919, December 11, 1919, January 15, 1920, January 28, 1920, February 25, 1920, and May 18, 1920. At these hearings, the Central Union Telephone Company was represented by Ben B. Boynton, attorney, and the City of Peoria, by R. H. Radley, corporation counsel.

The Central Union Telephone Company introduced an inventory of the physical property appraised by three methods. One appraisal was based on mean average costs for labor and material for the period

from 1914 to 1918, inclusive; the second on prices introduced by Mr. Kempster B. Miller in a former case involving telephone rates in Peoria, Case No. 3043; and third on prices introduced by the Commission's engineers in the same proceeding. In each case the net additions to plant as shown by the company's books for the period from June 30, 1915, to June 30, 1919, were added at cost. The company also introduced statements of its operating revenues and expenses for the ten months' period ending October 31, 1919; an estimate of one year's operating income and expenses based upon actual operating results for the six months' period from July 1, 1919, to December 31, 1919; a statement of the classification and distribution of subscribers' stations as of September 30, 1919; traffic data covering inter-office trunking; a statement of the estimated annual increases in operating expenses resulting from increased wages and salaries made effective between July 1, 1919, and December 31, 1919, but not included in the statement of expenses for the year 1919; and proof of publication of notice of intention to apply for increased rates.

The City of Peoria introduced exhibits showing summary of appraisal of the property involved as of June 30, 1919; estimate of [fol. 16] assumed fair annual operating revenues and expenses based on operating results of the company for the year ending December 31, 1918; the order entered by the Commission in Case No. 3043 approved April 17, 1918; general traffic studies applied to inter-office trunking; and comparative studies of employees' wages in Peoria and other exchange systems.

The Commission introduced in evidence a report made by its accounting department covering operating revenues and expenses for the period January 1, 1918, to October 31, 1919; statement of wages paid by the Central Union Telephone Company at Peoria; comparative balance sheets; and report of service investigations made by the engineering department.

The record shows that for a number of years last past and up to midnight of July 31, 1918, the Central Union Telephone Company had in effect in Peoria a certain schedule of rates for telephone service and that on midnight July 31, 1918, its property and business, including Peoria, was taken over and managed thereafter by the United States Government, acting through the Postmaster General. The conduct of the company's affairs by the United States Government continued from July 31, 1918, to midnight July 31, 1919, at which time the property and business was returned to the Central Union Telephone Company under and pursuant to an Act of Congress approved July 11, 1919. The Government of the United States while operating the property, continued in effect the same schedule of rates as had been in effect, until June 11, 1919, at which time a schedule of increased rates for telephone service at Peoria was placed in effect.

This schedule of rates was authorized and approved by the Postmaster General prior to June 6, 1919. The Act of Congress approved [fol. 17] July 11, 1919, under which the property was returned to the

company provided that existing toll and exchange telephone rates if established or approved by the Postmaster General on or prior to June 6, 1919, should continue in force for a period of four months after the Act took effect, unless sooner modified by authorities having jurisdiction over them.

On July 22, 1919, the Central Union Telephone Company in its own name and as a public utility, filed its schedule of increased rates known as I. P. U. C. 1, covering telephone service in Peoria, and vicinity, which schedule of rates contains the same rates as were approved by the Postmaster General prior to June 6, 1919, and placed in effect by the Postmaster General June 11, 1919.

In a former case, Docket No. 3043, involving the rates of the Central Union Telephone Company at Peoria, and vicinity, this Commission found the fair value of the Peoria exchange property, based on inventories and appraisals of such property as it existed on June 30, 1915, to be \$1,100,000. All of the appraisals introduced in evidence in Case No. 3043, were based on an inventory made on the Peoria exchange property as it existed on June 30, 1915, and the record shows that this inventory was made a part of the record by stipulation between the company and the city of Peoria.

The reproduction cost new of the property as introduced by the Central Union Telephone Company, using mean average prices for labor and material for the period 1914 to 1918, plus the net additions to plant for the period from June 30, 1915, to June 30, 1919, at cost is \$1,752,133, and the present condition cost, on the same basis is \$1,517,842. The estimated cost of establishing the business attached to the Peoria exchange is given as \$403,633 and the amount or working capital allocable to the Peoria exchange is \$38, [fol. 18] 423. The total reproduction cost new of the Peoria exchange property as of June 30, 1919, on this basis, therefore, is \$2,491,278 and the total present condition cost is \$2,246,987.

The reproduction cost new of the physical property, based upon the inventory introduced, using the same unit prices as were used by Mr. Kempster B. Miller in Case No. 3043, and including net additions to plant at cost, from June 30, 1915, to June 30, 1919, with the working capital and estimated cost of establishing business is \$1,975,828, and the present condition cost is \$1,794,572. The fair value submitted by the Central Union Telephone Company, using the value as previously fixed by the Commission in Case No. 3043, plus net additions to plant for the period from June 30, 1915, to June 30, 1919, is \$1,387,089.

The Central Union Telephone Company contended that the value of the property used and useful in furnishing telephone service at Peoria, and vicinity, has increased since the finding of the Commission in Case No. 3043 and that the company is entitled to the benefit of that increase in value. The city contended that the order entered in Case No. 3043, less deductions due to accrued depreciation, is binding on the parties as to the matters therein decided, and that the only increase that can be added to the value of the property as determined by the Commission in Case No. 3043 is the depreciated

cost of the net additions made to the property since the fixing of said value. The various elements entering into the value of the property were exhaustively considered by the Commission in making the final determination as to the value of the property devoted to furnishing telephone service in Peoria in the previous case involving telephone rates at Peoria. Original costs, costs to reproduce, and normal average costs were fully considered. All elements of [fol. 19] value both tangible and intangible were included in the total fixed by the Commission and the Commission is of the opinion, and finds, that, for the purposes of this case, the value as determined in Case No. 3043 is a proper valuation insofar as it represents property involved in the present proceeding.

It appears, however, that the Commission in fixing a value for the property in the previous Case No. 3043 allowed the sum of \$46,543 to be included for net additions to plant from June 30, 1915, the date of the inventory used, to June 30, 1917.

In the instant case the net additions to plant from June 30, 1917, to June 30, 1919, have been shown, in the record, to amount to \$287,089. Since the net additions to plant from June 30, 1915, to June 30, 1917, amounting to \$46,543, were included in the total valuation fixed by the Commission in Case No. 3043, only net additions from June 30, 1917, to June 30, 1919, may properly be included in any valuation to be made herein.

On this basis, net additions amounting to \$240,546 at cost, less accrued depreciation, of \$24,055, leaves \$216,491 which may be included as a part of the present Peoria property.

As a result of careful consideration of the record in this case, the Commission is of the opinion, and finds, that for the purposes of this case the fair value of the property of the Central Union Telephone Company at Peoria as of June 30, 1919, should be determined on the basis of the valuation as made in Case No. 3043, plus the net additions from June 30, 1917, to June 30, 1919, depreciated.

In connection with the service investigations made by the engineering department of the Commission, the Commission's engineers determined the physical condition of the plant by inspection. Based [fol. 20] upon such inspection and a careful consideration of normal life tables, the value of the average annual depreciation now occurring in the physical portion of the plant is estimated to be \$88,200, which estimate the Commission finds to be reasonable.

In Case No. 3043, the Commission held that a reasonable rental to be paid the American Telephone and Telegraph Company by the Central Union Telephone Company on transmitters, receivers, and induction coils, should be 55 cents per instrument, per annum. The Central Union Telephone Company contended that this allowance should be increased because of the increased cost of the parts in question, but did not introduce evidence to support this claim for an increased allowance. In the previous case involving telephone rates in Peoria, the Commission gave very careful consideration to this item of expense. The record in the instant case does not contain evidence in support of any increase except evidence of the most general character as to the increased cost of the equipment furnished by

the parent company. It appears, therefore, in the absence of evidence to the contrary, and the Commission finds, that the allowance as fixed in the previous case to cover the rental of transmitters, receivers and induction coils is reasonable and that the operating expenses as shown should be adjusted accordingly.

The City of Peoria introduced exhibits tending to show that the traffic expense in connection with the operation of the telephone system at Peoria is excessive due to the fact that another type of switching equipment had not been installed. The Central Union Telephone Company introduced exhibits and testimony showing that the present trunking between exchanges is necessary, but that it might be theoretically possible to reduce trunking expense in the [fol. 21] main exchange by the installation of other equipment. The possible estimated annual reduction in traffic expense, using present wages paid by the Central Union Telephone Company, due to the adoption of this expedient, is conceded to be \$9,273. The telephone company, however, contends that its present trunking arrangements are the best that could be made under the conditions confronting it, and it objects to any deductions being made from its actual operating expenses incurred for trunking.

For the purpose of this case, it is not necessary to decide whether this deduction should be made, as the rates under consideration are shown to be reasonable, whether the operating expenses are so reduced or not. Therefore, the Commission will not at this time pass upon the question of whether the operating expenses should be so reduced.

If the operating expenses were adjusted in accordance with the city's contention the estimated annual operating expenses for the year ending December 31, 1919, based upon the actual operating results under the proposed rates and including an allowance to provide an adequate reserve for depreciation as above set forth, and also including taxes and other deductions from net income, would be \$498,193. The annual operating revenue for the year ending December 31, 1919, based upon revenues for the six months' from July 1, 1919, to December 31, 1919, during which time the proposed rates have been in effect, and including that portion of toll revenue property allocable to the Peoria local exchange system, was \$596,695. The net income available for return, after giving due consideration to rent deductions, amortization, and non-operating revenues, would be \$95,226.

The Central Union Telephone Company introduced exhibits and supported the exhibits with testimony in which it was shown that [fol. 22] annual increases in salaries and wages made during the period from July 1, 1919, to December 31, 1919, but not included in the estimated operating expenses for the year ending December 31, 1919, amount to \$25,503. When this necessary increased operating expense is taken into account, the amount available for return would be \$69,723, which is equal to an annual return of 5.2 per cent upon the estimated fair value of the property.

After carefully considering the evidence, the Commission is of the opinion, and finds:

(1) That for the purposes of this case, a reasonable value of the property used and useful in furnishing telephone service in Peoria, County of Peoria, and vicinity, and the business attached thereto, including every element of value, tangible and intangible, as of June 30, 1919, is \$1,320,000;

(2) That a reasonable monthly allowance as an item of operating expense to provide an adequate reserve for depreciation is \$7,360, plus 6 per cent of the cost of all annual additions that may be made to the plant in the future;

(3) That the schedule of rates known as I. P. U. C. 1, of the Central Union Telephone Company applying to Peoria, and vicinity, is just and reasonable, and should be approved.

It is, therefore, ordered by the Public Utilities Commission, of Illinois, as follows:

Section 1. That the Central Union Telephone Company be, and the same is hereby, permitted and authorized to place in effect the schedule of rates on file with the Commission, designated as I. P. U. C. 1, covering telephone service in the City of Peoria, and vicinity, effective August 1, 1920, provided written notice of the effective [fol. 23] date the said schedule of rates is filed with the Commission not later than August 1, 1920; or effective at any subsequent date, provided written notice of the effective date of the said schedule of rates is filed with the commission not less than ten days prior thereof; and when notice of the effective date of the said schedule of rates is filed with the Commission, as specified herein, and the said schedule of rates is posted or filed in the office of the public utility, all as required by the Public Utilities Act of Illinois and General Order No. 28, adopted by the Commission, the said schedule of rates shall be the legal rates covering telephone service in the City of Peoria and vicinity.

Section 2. That the Central Union Telephone Company set aside a monthly allowance of \$7,350 to provide a reserve against depreciation, plus 6 per cent per annum of the cost of all annual additions that may be made to the plant located at Peoria, Illinois, in the future.

Section 3. That all items of expense having to do with the upkeep of the plant except those specifically designated in Section 11, Uniform System of Accounts for Telephone Companies, issued by the Commission, shall be charged to Account 115, Depreciation of Plant and Equipment.

By order of the Commission, at Springfield, Illinois, this thirty-first day of July, 1920.

[fol. 24]

EXHIBIT B TO BILL OF COMPLAINT

STATE OF ILLINOIS:

ILLINOIS COMMERCE COMMISSION

10426

In the Matter of the Proposed Advance in Rates for Telephone Service Furnished in Peoria, Averyville, Bartonville, East Peoria, and Peoria Heights and Vicinity, Stated in Rate Schedule I. P. U. C. 2 of THE CENTRAL UNION TELEPHONE COMPANY, now THE ILLINOIS BELL TELEPHONE COMPANY.

Permanent Suspension Order

By the Commission:

On March 31, 1920, the Central Union Telephone Company, now the Illinois Bell Telephone Company, filed Rate Schedules I. P. U. C. 2 in which it was proposed to advance the rates for telephone service in Peoria, Averyville, Bartonville, East Peoria and Peoria Heights, and vicinity. The proposed rates were suspended from time to time pending investigation.

Hearings were held in this matter and some evidence adduced which among other things includes data covering the cost of operation during the early part of the year 1920, but the investigation of this matter has not been completed. Since the filing of the proposed rates there has been a marked decline in the prices of labor and materials entering into the cost of rendering telephone service. Under these conditions it would be unfair at this time to fix rates for the future. It would not be fair to the petitioner nor to the patrons of the petitioner to attempt to fix rates under conditions and upon [fol. 25] the cost of operation that prevailed in the early part of the year 1920, when such conditions and costs do not now prevail.

The Commission therefore finds that Rate Schedules I. P. U. C. 2 of the Central Union Telephone Company, now the Illinois Bell Telephone Company, covering rates for telephone service in Peoria, Averyville, Bartonville, East Peoria, Peoria Heights and vicinity, should be permanently suspended.

It is therefore ordered that Rate Schedules I. P. U. C. 2 of the Central Union Telephone Company, now the Illinois Bell Telephone Company, covering rates for telephone service in Peoria, Averyville, Bartonville, East Peoria, Peoria Heights and vicinity be, and the same are hereby, permanently suspended, annulled and cancelled.

By order of the Commission at Springfield, Illinois, this 31st day of October, 1921.

(Signed) Julius Johnson, Secretary

[fol. 26]

EXHIBIT C TO BILL OF COMPLAINT

STATE OF ILLINOIS:

BEFORE THE ILLINOIS COMMERCE COMMISSION

10426

[Title omitted]

The Illinois Bell Telephone Company having filed its schedule of rates herein on April 1, 1920, and the above case having been heard by this Commission during November and December, 1920, and the permanent suspension order entered by said Commission on October 31, 1921, having been reversed by the Circuit Court of Peoria County, and the case having been thereafter heard by this honorable Commission on June 6 and July 7, 1922, said Illinois Bell Telephone Company requests a prompt decision by said Commission and moves that pending the entry of a final order herein, a temporary schedule of rates be made effective on less than thirty days' notice, to prevent the further confiscation of the property of said Illinois Bell Telephone Company in Peoria, which is contrary to the Constitution of the State of Illinois and the United States of America.

Dated September 14, 1922.

Illinois Bell Telephone Company, by (Signed) Cutting,
Moore & Sidley, Its Attorneys. (Signed) Wm. D. Bangs,
Counsel.

[fol. 27]

EXHIBIT D TO BILL OF COMPLAINT

STATE OF ILLINOIS:

ILLINOIS COMMERCE COMMISSION

[Title omitted]

Introductory Order

By the Commission:

The Illinois Bell Telephone Company having filed with this Commission on September 16, 1922, its request and motion for a temporary order approving a temporary schedule of rates on less than thirty days' notice; and it appearing to the Commission that the hearing and taking of evidence in the above entitled cause is very rapidly nearing a close and should, if carried forward with diligence and energy, be completed within a few months; and it being a matter of common knowledge that a change of rates in a large community at short intervals of time is more or less disconcerting to the service rendered by a utility and tends to destroy the public relations with the utility in the community served;

Therefore the Commission is of the opinion and finds that the request and motion of the Illinois Bell Telephone Company of September 16, 1922, for a temporary order establishing a temporary rate on less than thirty days' notice, should be denied without prejudice.

It is therefore ordered that the request and motion of the Illinois Bell Telephone Company of September 16, 1922, for a temporary [fol. 28] order establishing a temporary rate on less than thirty days' notice be, and the same is hereby, denied without prejudice.

By order of the Commission at Springfield, Illinois, this 28th day of September, 1922.

(Signed) Julius Johnson, Secretary. (Seal.)

[fol. 29] **EXHIBIT "E" TO BILL OF COMPLAINT**

Illinois Bell Telephone Company, 212 West Washington Street,
Chicago

July 5, 1923.

Illinois Commerce Commission, Springfield, Ill.

GENTLEMEN:

Peoria Rate Case, No. 10426

The last hearing in the above case was held on September 28, 1922, and then continued, pending the preparation of reports by the Commission's accountants and engineers.

The Company's most recent statements of the operation of the Peoria exchange show that the revenues are failing to meet the operating expenses by approximately \$4,000 a month.

We respectfully request that this case be set for hearing at as early a date as possible.

Yours very truly,

(Signed) W. D. Bangs, General Counsel.

[fol. 30] **Affidavits.**

**AFFIDAVIT OF ALBERT P. ALLEN ON REVENUES UNDER RATE
SCHEDULE I, P. U. C. No. 2**

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

ALBERT P. ALLEN, being duly sworn, on oath deposes and says:

That he is commercial engineer of the plaintiff, Illinois Bell Telephone Company, and resides in Chicago, Illinois; that he graduated from the Worcester Polytechnic Institute in the year 1889 with

a degree of Bachelor of Science in mechanical engineering and in the year 1890 with a degree of Bachelor of Science in electrical engineering.

That he was employed by the American Telephone and Telegraph Company from August, 1890, to June, 1903, during which time he occupied the positions of district inspector, Chicago, Illinois; district inspector, Boston, Massachusetts; general inspector in charge of Long Lines Equipment, headquarters in New York; that he was traffic engineer of the Central Telephone Company from June, 1903, to June, 1911; that he was traffic engineer of the central group operating in the States of Illinois, Michigan, Wisconsin, Ohio and Indiana from June, 1911, to January, 1914, when he was transferred to the Chicago Telephone Company) now Illinois Bell Telephone Company) as commercial engineer, which position he now [fol. 31] occupies. That while commercial engineer he had and has charge and supervision of the making of schedules of rates for the plaintiff and the preparation of studies in relation thereto, making of the estimates of revenues resulting from rates in effect or proposed, and the study of the effect of changes of rates on the revenues of the company.

That he is familiar with all rates and charges which are made by the plaintiff for the telephone service and facilities furnished by it and with the schedules of such rates which are now and have been from time to time filed by the plaintiff with the Illinois Commerce Commission and its predecessor, the Illinois Public Utilities Commission, and that he has carefully examined Rate Schedules I. P. U. C. No. 1 and I. P. U. C. No. 2 filed with the Illinois Public Utilities Commission, covering the rates for telephone exchange service in the territory known as the Peoria exchange, which said territory includes the City of Peoria, and Villages of Averyville, Bartonville, East Peoria and vicinity, in the State of Illinois.

That this affiant has prepared a table showing the rates filed in said Rate Schedule I. P. U. C. No. 1 and I. P. U. C. No. 2 and indicating all differences in the rates in said respective schedules, classified as to the rates for the respective classes of service, which said table is as follows:

[fol. 32] Illinois Bell Telephone Company, Peoria, Illinois,
Exchange

Class of service	Monthly rate	
	I. P. U. C. No. 1	I. P. U. C. No. 2
Business:		
Individual	\$6.00	\$8.00
Two Party	5.00	6.75
Four Party	2.50	....
Extension	1.00	1.25

Class of service	Monthly rate	
	L. P. U. C. No. 1	L. P. U. C. No. 2
Residence:		
Individual	3.25	4.00
Two Party	2.50	3.25
Four Party	2.25	2.50
Extension .....	.50	.75
Rural:		
Business	2.75	4.00
Residence	2.00	2.50
Private Branch Exchange, Flat Rate:		
Cord Board (Hotel)	2.75	4.00
(Others)	3.00	4.00
Cordless Board	2.50	2.50
Trunks	8.00	10.50
Stations (Hotel) .....	.41 ² ₃	.60
(Others)	1.00	1.25
Private Branch Exchange—Measured Rate:		
Cord Switchboard—1 position non-multiple* switchboard, not exceeding 30 jacks, and operator's set		4.00
Additional Switchboard Positions, each....		2.50
Additional Jacks, per strip of 10.....		.75
Cordless Board and Operator's Set (capacity 3 trunks and 7 stations)		2.50
Stations on same premises, each.....		.75
One Trunk and 200 or less messages.....		8.50
Additional Trunks, each		2.50
Additional Messages, each .....		.03
Power Generator Line, each $\frac{1}{4}$ mile or frac- tion .....		.83
Cord Switchboards will be furnished only to subscribers contracting for at least 2 trunks and 400 messages per month.		

* Multiple switchboard will be furnished when desired at a monthly rental based on the cost of switchboard, with associated wiring and apparatus installed.

Class of service	Monthly rate	
	I. P. U. C.	I. P. U. C.
	No. 1	No. 2
Intercommunicating System—Flat Rate:		
In addition to rates for trunk and stations (minimum equipment 1 trunk and 4 stations) .....	.50	
Switching Devices, each (in addition to station rate) .....		.75
Trunks, Intercommunicating Residence, each	3.25	4.00

Intercommunicating System—Measured Rate:		
Switching Devices, each (in addition to station rate)	Not quoted	.75
Joint User	1.50	2.75
Additional Jack Strips .....	.50	.75
Power Generation Units .....		.83

Extra Mileage Units:

P. B. X. ....	.60	.75
Individual .....	.60	.75
Two Party .....	.40	.50
Four Party .....	.25	.50

[fol. 33] That this affiant has made a careful and detailed estimate as to the effect on the revenues of the plaintiff in the event that the rates prescribed by said Schedule I. P. U. C. 2 should become effective, said estimate being based upon the judgment and experience of the plaintiff, as aforesaid, and his opinion, based upon said judgment and experience, of the effect of the said change in rates on the Company's subscribers in said exchange who will, as shown by the actual experience of the Company, make changes in their class of service as a result of the increase of rates in said Schedule I. P. U. C. No. 2, and it is the opinion of this affiant that said Schedule of Rates I. P. U. C. No. 2 would cause an increase in the total annual revenue of the plaintiff in said Peoria exchange of not to exceed \$190,000 per annum, which said opinion is based upon all the matters aforesaid.

(Signed) Albert P. Allen

Subscribed and sworn to before me this 17th day of June, A. D. 1924. (Signed) E. D. Meyers, Notary Public for the County and State aforesaid. (Seal.)

[fol. 34] AFFIDAVIT OF ARTHUR PERROW ON REVENUES AND EXPENSES

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

Arthur Perrow, being first duly sworn on oath, deposes and says: He is Chief Accountant of the plaintiff company and has been engaged for sixteen years in accounting work for Bell System Telephone Companies.

That the records, books and accounts of the plaintiff are and have been since January 1, 1913, kept in accordance with the Uniform System of Accounts, as prescribed by the Interstate Commerce Commission under an Act of Congress, which was adopted in identical form by the State Public Utilities Commission of Illinois on July 1, 1914, and continued in effect by the Illinois Commerce Commission law effective July 1, 1921, as the Uniform System of Accounts for Classes A and B Telephone Companies in Illinois.

That the affiant is thoroughly familiar with the records, books and accounts of the plaintiff showing the results of the operations of the plaintiff in the territory of the plaintiff known as the Peoria exchange, and that the statements hereinafter made by this affiant are founded upon said records, books and accounts; that the revenues and expenses (other than interest charges) resulting from the operations of the Company in the Peoria exchange, are as follows for the periods stated:

[fol. 35]

Peoria, Illinois, Exchange Income Statement

	Year 1921	Year 1922	Year 1923	Apr. 1, 1923, to Mar. 31, 1924
Exchange Revenues	\$615,329.82	\$645,608.49	\$683,629.27	\$697,395.13
Toll Revenues	63,252.55	73,587.23	77,637.14	76,623.19
Miscellaneous Operating Revenues	15,191.06	12,919.56	21,204.06	22,966.38
Non-Operating Revenues	287.87	143.12	431.52	286.61
Gross Revenues..	\$694,061.30	\$732,258.40	\$782,901.99	\$797,271.34
Less: Licensee Revenue—Dr.	30,361.26	32,157.31	34,061.39	34,627.62
Total Revenues..	\$663,700.04	\$700,101.09	\$748,840.60	\$762,643.72
Current Maintenance ...	110,009.12	154,299.72	157,119.30	143,854.92
Depreciation of Plant and Equipment	99,156.62	112,965.22	176,013.86	184,323.11
Traffic Expenses.....	266,187.90	316,233.97	303,164.58	274,730.13
Commercial Expenses ..	65,713.59	79,745.96	81,052.49	83,073.10
General and Miscellaneous Expenses	20,415.75	25,960.62	25,941.39	21,678.96
Taxes	53,536.93	55,988.54	67,791.87	70,051.75
Other Expenses and De- ductions	2,367.68	3,452.76	2,710.16	2,846.04
Total Expenses....	\$617,387.59	\$748,646.79	\$813,793.65	\$780,558.01
Balance Available for Return	\$46,312.45	\$48,545.70	\$64,953.05	\$17,914.29
		Deficit	Deficit	Deficit

That the cost of the physical property used and useful in rendering telephone service in said Peoria exchange on December 31, 1923, was \$3,187,106. That the net additions to said property from July 1, 1919, to December 31, 1923, amounted to \$1,617,533.

That, based on his knowledge of the operations of the plaintiff in said exchange, it is the opinion and judgment of this affiant that the amount reasonably required for working cash capital for said property is not less than \$73,000.

(Signed) Arthur Perrow.

Subscribed and sworn to before me this 17th day of June, A. D. 1924. (Signed) E. D. Meyers, Notary Public for the County and State Aforesaid. (Seal.)

[fol. 36] AFFIDAVIT OF JOHN R. TURNER, ON VALUATION

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

John T. Turner, being duly sworn, on oath deposes and says:

That he resides in Glen Ellyn, Illinois, and that he is Appraisal Engineer for the Illinois Bell Telephone Company; that he has had over fifteen years' experience in the telephone business; that during the first three years of his association with the Bell System, he was employed by the Chesapeake and Potomac Telephone Company and the New York and New Jersey Telephone Company.

That he entered the employ of the Chicago Telephone Company, now the Illinois Bell Telephone Company, in the early part of February, 1912, engaging in the engineering of outside telephone plant and continuing this work up to his entering the army in July, 1917, at which time he was Central Division Engineer for the City of Chicago, having charge of the engineering of a very large and important section of the City including the principal business section.

That, during his service in the army, he was a Major in the Signal Corps, and as such had further experience through supervising the construction of telephone and telegraph plant, while in this country and abroad.

That on returning to Chicago early in 1919, after being honorably discharged from the army, he entered the employ of the Chief [fol. 37] Engineer's Department of the central group of Bell Telephone Companies, consisting of the Chicago Telephone Company, the Wisconsin Telephone Company, the Michigan State Telephone Company, and the Cleveland Telephone Company; that during his connection with these companies, he engaged in valuation and cost work for Illinois, Wisconsin, Michigan, and Indiana, gaining a familiarity with the plants and equipments of the several companies, and acquiring a knowledge of their costs.

That in 1920, at the time of the dissolution of the central group of Bell Telephone Companies, he was transferred to the Chief Engineer's office of the Chicago Telephone Company, now the Illinois Bell Telephone Company, with which department he is still connected, having charge of all inventories and appraisals of the company's property.

That this affiant is thoroughly familiar with the records of the Company showing the costs of labor and material from the year 1915 to the date hereof; that during the last few years he has appraised over \$200,000,000 of telephone property in the State of Illinois and elsewhere, and has testified in numerous cases before the Illinois Commerce Commission as to the reproduction cost new and the reproduction cost new less depreciation of the plaintiff's properties.

That he has carefully examined an inventory and appraisal of the property used and useful in the Peoria exchange made as of June 30, 1915, which this affiant is informed and believes to be the appraisal relied upon by the Public Utilities Commission of the State of Illinois in entering its order attached to the bill of complaint herein as Exhibit "A," and has caused to be compiled from the books and records of the plaintiff, the gross additions to and [fol. 38] displacements from said property from July 1, 1915, to September 30, 1923, and has determined from the records of the plaintiff the percentages of increase or decrease of the material and labor costs of said gross additions, and displacements for said period, and has thereby determined the reproduction cost new as of September 30, 1923, of the total plant in service of said plaintiff used and useful in rendering telephone exchange service in said Peoria exchange; that said reproduction cost new is at least \$3,200,000, not including general equipment or working capital, or any general overhead charges, and not including the going value of said property.

Affiant further says that in appraising property of any kind, there are two general elements to be considered: first, those costs which are directly assignable to a specific thing, such as the cost of a pole or a switchboard; and, second, those costs which are of a general character applied to the plant as a whole, usually designated as overhead costs. That this affiant is familiar with the cost of telephone construction work, both as to the specific items and as to the overhead items mentioned above, and that after giving careful consideration to all of the facts, including the character of the property and the manner in which it was built, it has been determined by this affiant that an additional amount of at least fifteen per cent of the cost of land, buildings and plant should be added for overhead costs to the amounts heretofore stated.

That this affiant has made a determination of the going value of the Company's property and business in said exchange; that there is a difference in value of the completed physical property and the value of that property with its present business established [fol. 39] operating with a trained and efficient organization, and that in the opinion of this affiant, the going value of said property

at the date hereof is at least \$380,748. That this going value of the property has been determined with consideration of the financial history of the Peoria exchange, but is not in any way based on the past losses of the plaintiff in operating said exchange, or the value of any of the plaintiff's franchises.

That this affiant is familiar with and has accepted the affidavit of Mr. Perrow as to the cash working capital, and has determined the general equipment and supplies used and useful in the conduct of the plaintiff's business in said exchange.

That this affiant is familiar with the property of the plaintiff in the Peoria exchange, and has from time to time made special inspections with a view to observing the condition of said property and the parts thereof; that he is familiar with the condition of said property as to the physical deterioration thereof. That based upon his knowledge of said property, deponent states that the said property in service used and useful in rendering service in the Peoria exchange is in at least 91 per cent condition.

That this affiant is familiar with the original cost of the property, the value thereof as fixed and determined by the Public Utilities Commission in its order attached to the bill of complaint herein as Exhibit "A," and the appraisal used in said order, and the net additions to said property since the date of said order, and the course of prices of labor and materials used in telephone construction.

That after giving careful consideration to the foregoing facts and matters, and to the plaintiff's property, its history, location and [fol. 40] character, and to all other facts in affiant's knowledge affecting its value, it is the opinion of the affiant that the present fair value of the entire property of the plaintiff used and useful and exclusively devoted by it to the furnishing of telephone exchange service in the Peoria exchange is not less than \$3,800,000, and that the detail of the reproduction cost of said property is shown in the following table:

Peoria Exchange
Reproduction Cost of Property

	Reproduction costs.	
	New	New less depreciation
Exchange plant, Oct. 1, 1923.....	\$3,268,225	\$2,985,980
General Overheads:		
Omissions and contingencies	15%	490,234
Engineering		
Administration and legal		
Taxes, insurance and interest during construction		
		447,897
Exchange Plant, Oct. 1, 1923....	\$3,758,459	\$3,433,877
General Equipment.....	49,026	37,707
Exchange Physical Property, Oct. 1, 1923	\$3,807,485	\$3,471,584
Working Capital—Cash	73,000	73,000
—Supplies	37,894	36,255
Going Value (10%).....	380,748	380,748
Total Exchange Property, Oct. 1, 1923	\$4,299,127	\$3,961,587
Net Additions, Oct. 1, 1923, to Apr. 30, 1924	27,517	27,517
Total Exchange Property, May 1, 1924	4,326,644	3,989,104

And further affiant sayeth not.

(Signed) John R. Turner.

Subscribed and sworn to before me this 17th day of June, A. D. 1924. (Signed) E. D. Meyers, Notary Public for the County and State Aforesaid. (Seal.)

[fol. 41] AFFIDAVIT OF U. F. CLEVELAND ON REVENUES & EXPENSES

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

U. F. Cleveland, being duly sworn, on oath says:

That he resides in Chicago, Illinois. That he was first employed by the Chicago Telephone Company in the year 1892, in its ac-

counting department, and excepting for a period of about eleven months during 1909 and 1910, he has been continuously employed by said company in accounting work. That since July 1, 1920, he has been the chief accounting officer of the company with the title of General Auditor, and has complete charge of all of the company's books, records and accounts and is thoroughly familiar with them.

That this affiant has read and is familiar with the affidavit of Mr. Perrow filed in this cause, and the statements of revenues and expenses of the plaintiff derived from operations of said Peoria exchange, as set forth in said affidavit and believes said statements to be true and correct; that in said statements there are credited as revenues derived from operations within said exchange all receipts from messages between points within said exchange and a proportion of the receipts from messages between points within said exchange and points without. That the basis used in establishing said proportion is the usual and customary basis of settlement for telephone service interchanged between the plaintiff and approximately six hundred independent telephone companies with [fol. 42] which it has connections in the State of Illinois, which basis was established under the approval of the Illinois Public Utilities Commission; that included in such proportion there is a proportion of the receipts from interstate telephone messages, which proportion is not less in amount per message than the proportion of receipts from intrastate messages; that this affiant is of the opinion, from his knowledge and experience in telephone accounting and an examination of the records of the plaintiff's operations in said Peoria exchange, that the inclusion in the income statements set forth in said Perrow's affidavit of the interstate operations of the plaintiff in said exchange (which cover approximately five per cent of the total toll operations of the plaintiff therein), does not materially affect the results shown by said statements.

(Signed) U. F. Cleveland.

Subscribed and sworn to before me this 17th day of June,
A. D. 1924. (Signed) E. D. Meyers, Notary Public for
the County and State Aforesaid. (Seal.)

[fol. 43] AFFIDAVIT OF B. C. LINGLE ON RATE OF RETURN

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

B. C. Lingle, being first duly sworn, on oath says that he resides at Chicago, Illinois; that he is an investment banker and is Vice President of the Harris Trust and Savings Bank, which is engaged in an investment business; that he has been continuously employed for twelve years in passing on investments made by said bank and the

purchase of securities by it; that said bank is one of the largest houses in the United States handling public utility securities, it and its predecessor having been in business for over forty years.

That the cost of borrowed money to public utilities on first mortgage of the companies' properties is approximately six per cent; for example, the first mortgage five per cent bonds of the plaintiff issued in July, 1923, in the amount of Fifty Million Dollars (\$50,000.00) cost the Company approximately 5.6 per cent, including amortization and discount.

That the prudent financing of a corporation such as the plaintiff requires that at least fifty per cent of its capital requirements should be raised by the sale of stock thereby creating an equity in the property. That it is fundamental that public utilities such as the plaintiff, which expect to continue permanently in business and which are continuously called upon to increase their investments in order [fols. 44 & 45] to meet the requirements imposed upon them, must be able to pay a fair dividend on their stocks and earn a reasonable surplus over such dividend so as to give assurance to investors of the reasonable continuance of the dividend.

That there is active competition among public utilities for new funds and the plaintiff is compelled to meet this competition and to offer investors inducements equal to those offered by others, and that investors must have reasonable assurance of the integrity of the investment and the safety of their money.

That in the opinion of this affiant, a public utility such as the plaintiff, in order to have a ready market for its stock, and obtain par therefor, should earn and pay a dividend of at least eight per cent thereon, and earn a surplus of from two to three per cent over said dividend.

(Signed) B. C. Lingle

Subscribed and sworn to before me this 17th day of June, A. D. 1924. (Signed) Glenn O. Hoffnines, Notary Public for the County and State Aforesaid. (Seal.)

[File endorsement omitted.]

[fol. 46]

IN UNITED STATES DISTRICT COURT

[Title omitted]

TEMPORARY RESTRAINING ORDER—Filed June 18, 1924

This day came the plaintiff, Illinois Bell Telephone Company, by Philip B. Warren, its solicitor, and moved the Court for a temporary restraining order, in accordance with the prayer of its bill of complaint filed herein, and in support of its said motion plaintiff tendered to the Court certain affidavits filed herein.

And the Court having heard counsel for the plaintiff in support of its motion, and having read said bill and affidavits, and it appearing

to the Court that the telephone rates prescribed by the order of the Public Utilities Commission of Illinois, complained of in the said bill of complaint and therein referred to as I. P. U. C. No. 1, have confiscated and if further enforced will continue to confiscate the property of the plaintiff, and have caused and if further enforced will continue to cause the plaintiff great and irreparable and continuing injury.

It is therefore ordered and decreed that the defendants Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois and Edward J. Brundage, Attorney General of the State of Illinois, be, and they are hereby severally enjoined and restrained until the further order of the Court, from attempting to compel the plaintiff its officers, agents or employees to observe or enforce the rates for telephone service set forth in said bill of complaint and [fol. 47 & 48] therein specifically referred to as I. P. U. C. No. 1, and that the defendants and all other persons be, and they are hereby, enjoined until the further order of the Court, from taking any steps or proceedings against the plaintiff, its officers, agents or employees to enforce any penalties or any other remedy against the plaintiff for disregarding said rates.

This order shall not take effect until the plaintiff shall enter into its bond or undertaking in the sum of One Hundred Thousand Dollars (\$100,000) conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained hereby, and further conditioned so that in the event that an interlocutory injunction as prayed for in the said bill of complaint shall not be awarded to the plaintiff upon or before the expiration of this order, the plaintiff shall refund to its several subscribers affected hereby, either in cash or by credit upon subsequent bills, any sums paid by them in the meantime in excess of the sums chargeable to them pursuant to the said order of said Commission hereinabove referred to, the enforcement of which is hereby temporarily restrained and enjoined.

And it is further ordered that the plaintiff is hereby authorized during the time this order is in effect, to increase its rates and charges for telephone exchange service in the territory of the plaintiff known as the Peoria exchange, as set forth in said bill of complaint, but not in excess of the rates and charges set forth in I. P. U. C. No. 2, specifically referred to in said bill of complaint.

June 18, 1924, 12:30 P. M.

Louis FitzHenry, District Judge.

[File endorsement omitted.]

[fols. 49 & 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed July 30, 1924

And now come the above named defendants, by Edward J. Brundage, Attorney General of the State of Illinois, and Shelton F. McGrath and R. H. Radley, special assistants Attorney General, their attorneys, and move the Court to dismiss the bill of complaint filed herein for want of equity, and to grant such other and further relief in the premises as may be just.

Edward J. Brundage, Attorney General of the State of Illinois, and Shelton F. McGrath, R. H. Radley, Special Assistants Attorney General, Attorneys for said Defendants.

[File endorsement omitted.]

[fol. 51] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERLOCUTORY INJUNCTION—Filed July 30, 1924

This matter coming on to be heard by the statutory Court consisting of George T. Page, Circuit Judge, Louis FitzHenry, District Judge, and Walter C. Lindley, District Judge, on motion of Plaintiff for an interlocutory injunction, and a full hearing having been had in open Court upon the bill and affidavits in support thereof.

The Court finds that the rates in force under the order of the Illinois Commerce Commission known as I. P. U. C. No. 1 are confiscatory and that the interlocutory order should be allowed, and is hereby allowed;

It is therefore ordered by the Court that the defendants Frank L. Smith, Cicero J. Lindly, Hal. W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois, be, and they are hereby severally enjoined and restrained, pending the determination of this cause and until the further order of this Court, from attempting to compel plaintiff, its officers, agents or employees, to observe or put in force the rates for telephone service set forth in the bill of Complaint filed herein and therein specifically referred to as I. P. U. C. No. 1, and that the defendants and all other persons be and they are hereby restrained and enjoined until the further order of this Court from taking any steps or proceedings against the plaintiff, its officers, agents or employees, to

[fols. 52 & 53] enforce any penalties or any other remedy against the plaintiff for disregarding said rates.

This order is made upon the express condition that any rates charged by the plaintiff shall not exceed the rates set forth in the schedule of rates described in the Bill of Complaint as I. P. U. C. No. 2.

And upon the further express condition that the plaintiff shall enter into its bond or undertaking in the sum of One Hundred Thousand Dollars (\$100,000.00) said bond to be in form as the bond filed by the plaintiff upon the granting of the preliminary restraining order, to be approved by the Judge of the District Court of the United States for the Southern District of Illinois, and conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained hereby; and further conditioned so that in the event that this interlocutory injunction shall be hereafter dissolved, the plaintiff shall refund to its several subscribers, either in cash, or by credit upon subsequent bills, any sums paid by them in excess of the sums chargeable to them pursuant to any reasonable rate first hereafter made by the Illinois Commerce Commission.

It is further ordered that this order shall be in full force and effect until the final determination of this case, or until reasonable rates for the plaintiff are hereafter prescribed by the Illinois Commerce Commission or as otherwise may be provided by law.

George T. Page, Circuit Judge. Louis FitzHenry, District Judge. Walter C. Lindley, District Judge.

[File endorsement omitted.]

[fols. 54-56] Bond on interlocutory injunction for \$100,000 approved and filed August 2, 1924; omitted in printing.

[fol. 57] Minute entry of argument and submission, March 30, 1925, omitted.

[fol. 58] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION TO DISMISS—May 6, 1925

This cause coming on to be heard upon the motion of the defendants to dismiss the bill of complaint herein and the court having heard and duly considered the same and being fully advised in the premises, it is ordered that the said motion be, and is hereby denied.

[fols. 59 & 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDERS ON MOTION TO DISMISS, ETC.—May 11, 1925

And now on this 11th day of May A. D. 1925, come the parties to this cause by their respective solicitors and by agreement of the said parties by their said solicitors, it is ordered by the court that the order heretofore entered herein on to wit: May 6th, A. D. 1925 be and same is hereby set aside. Upon motion of the said defendants by their solicitors leave is hereby granted the said defendants to withdraw their motion to dismiss the bill of complaint heretofore filed herein on to wit: July 30th, 1924. And the said defendants having this day filed a motion to dismiss the bill of complaint herein and the court having heard and duly considered the same, it is ordered that the said motion be, and the same is hereby denied. Thereupon the plaintiff entered a motion for a rule on the defendants to answer herein and the court having heard and duly considered the said motion and being now fully advised in the premises, it is ordered that the said defendants be, and they are hereby ruled to answer herein instantler; and the said defendants having elected in open court to stand by their said motion to dismiss and refuse to plead further, it is ordered by the court that the said defendants and each of them be, and they are hereby defaulted.

[fol. 61] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED MOTION TO DISMISS—Filed May 11, 1925

And now come the above named defendants, by Oscar E. Carlstrom, Attorney General of the State of Illinois, and Shelton F. McGrath and R. H. Radley, special assistants Attorney General, their attorneys, and move the Court to dismiss the bill of complaint filed herein and show to the Court the following reasons in support of this motion:

1. The order of the Commission finding that the rates set forth in I. P. U. C. No. 1 were just and reasonable as of July 31, 1920, was in effect a finding that the rates set forth in schedule I. P. U. C. No. 2 filed with the Commission before that time were not just and reasonable and disposed of said schedule No. 2.

2. The bill of complaint fails to show that the plaintiff has since the entry of the order of July 31, 1920, by the Public Utilities Commission of Illinois, filed any rate schedule on which said Commission could lawfully act.

3. The bill of complaint and exhibits made a part of it do not show that the plaintiff has exhausted its remedies before the Illinois Commerce Commission, and as a matter of comity between the Federal Government and State, a District Court should not take jurisdiction of a case of this character until the plaintiff has made it appear absolutely certain that it will be deprived of its rights by the State.

4. By filing a rate schedule with the Commission as provided by statute of the State of Illinois, the Commission would have been obliged to act upon such schedule or it would have become operative without such action more than a year before the filing of the bill of complaint herein.

[fol. 62] 5. If rate schedule No. 2 was pending before the Commission after the 31st of July, 1920, the plaintiff was wholly negligent and dilatory in not bringing the hearing on said schedule to a close and obtaining a decision of the Commission thereon prior to the filing of the bill of complaint herein.

6. The said bill of complaint shows that the plaintiff and its predecessor failed to exhaust its legislative remedies in connection with the premises for which relief is prayed in the bill of complaint.

7. This Court has no jurisdiction in this case because of the failure of the plaintiff to exhaust its legislative remedies provided by the State of Illinois.

8. There is no showing in the bill of complaint that the State of Illinois is about to or has or is attempting to confiscate the property of the plaintiff in violation of the Constitution of the United States.

9. Said bill of complaint shows that the Public Utilities Commission of the State of Illinois, on the 31st day of July, 1920 pursuant to the request of said petitioner, Central Union Telephone Company, the predecessor of the complainant herein, entered an order finding that the rates set out in the schedule referred to in said bill of complaint as I. P. U. C. No. 1, which were an increase over rates prior to that time charged by the petitioner therein, were fair and reasonable and fixed said rates as the legal rates for telephone service in said City of Peoria and vicinity; and said bill of Complaint further fails to show that said Central Union Telephone Company, or the complainant herein its successor, within two years from the date of the entry of said final order, or at any time since said date, has filed a petition setting up a new and different state of facts and invoking the action of the commission thereon, as by the Statute of the State of Illinois in such case is made and provided.

10. Said bill of complaint shows that the complainant and its predecessors have not only failed to proceed in the manner required by the statute of the State of Illinois in such case made and provided, in order to put said increased schedule of rates known as I. P. U. C. No. 2, or any other increased rates into effect, but on the [fol. 63] contrary the complainant and its predecessors have pro-

ceeded contrary to the statute in such case made and provided by filing the rates it now seeks to put into effect, referred to in said bill as I. P. U. C. No. 2, on the 1st day of April, 1920, prior to the entry of the final order of said Commission with reference to its schedule I. P. U. C. No. 1.

11. Said bill of complaint fails to show that the complainant has any franchise to operate a telephone exchange in said City of Peoria, or that it is in any way required to furnish such service other than by voluntary performance on its part.

12. Said bill of complaint fails to show that the complainant has any grounds of equitable relief, or is entitled to any of the relief prayed in said bill.

Oscar E. Carlstrom, Attorney General of the State of Illinois
and Shelton F. McGrath, R. H. Radley.

[File endorsement omitted.]

[fol. 64] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING ASIDE ORDER DEFAULTING DEFENDANTS—May 12, 1925

And now on this 12th day of May A. D. 1925, come the parties to this cause by their respective solicitors and by agreement of said solicitors, it is ordered by the Court that the default of the said defendants heretofore entered against them on to wit: May 11th, A. D. 1925, be, and the same is hereby set aside.

[fol. 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—May 12, 1925

This cause came on to be further heard at this Term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

1. That this Court has jurisdiction of the subject matter and of all of the parties to this cause.

2. That the allegations in the Bill of Complaint contained are true as therein stated.

3. That the equities of this cause are with the Plaintiff.

4. That the Defendants and each of them, to-wit: Frank L. Smith, Cicero J. Lindley, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, constituting the Illinois Commerce Commission of the State of Illinois and Oscar E. Carlstrom, Attorney General of the State of Illinois (successor in office to Edward J. Brundage, formerly Attorney General of the State of Illinois), and all other persons, be permanently restrained and enjoined from any attempt to compel the Plaintiff, its officers, agents or employees, to observe or keep in force the rates and charges for telephone service in Plaintiff's Peoria Exchange prescribed by its Rate Schedule "I. P. U. C. No. 1"; and that said Defendants and each of them, and all other persons be permanently restrained and [fols. 65a-70] enjoined from taking any steps or proceedings against plaintiff, its officers, agents or employees, to enforce any penalties, fines, forfeitures or any other remedy, either under any statute or otherwise, by reason of the charging and collecting by the Plaintiff of higher rates and charges for telephone service in Plaintiff's said Peoria Exchange than in said Rate Schedule "I. P. U. C. No. 1" provided.

5. That this Decree shall be in full force and effect until such time as the rates of the Plaintiff are altered or amended according to law by proceedings not inconsistent with this Decree.

[fol. 71]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—May 12, 1925

The above named defendants, Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright, and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois, having duly filed their petitions for appeal and assignment of errors therewith, it is ordered by the court that an appeal to the Supreme Court of the United States from the order overruling motion of defendants to dismiss the bill of complaint and from the final decree entered herein against said defendants be, and the same is hereby allowed and that a certified transcript of the record, affidavits, documents, and all proceedings herein be forthwith transmitted to said Supreme Court.

The appeal bond is fixed at \$500.00 to be approved by the Clerk of this Court.

[fols. 72-74] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—June 8, 1925

This cause having come on to be heard upon the motion of the defendants for an extension of time for thirty days for filing the transcript of the record in the above entitled cause in the Supreme Court of the United States, pursuant to an appeal heretofore granted and filed herein, and the Court having heard the arguments of counsel, and being fully advised in the premises;

It is hereby ordered that the time for presenting and filing the transcript of the record in the above entitled cause in the Supreme Court of the United States pursuant to the appeal heretofore granted and filed in said cause in this Court, be and the same is hereby extended for a period of thirty days from the 11th day of June A. D. 1925.

[fols. 75 & 76] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—June 11, 1925

This cause having come on to be heard upon the motion of the defendants in the above entitled cause, for an extension of time of thirty days for filing the appeal bond in the above entitled cause, and the court having heard the arguments of counsel, and being fully advised in the premises:

It is hereby ordered that the time for filing of the appeal bond as to the said defendants, be, and the same is, hereby extended for a period of thirty days from the 11th day of June, A. D. 1925.

[fols. 77-79] Bond on appeal for \$500.00, approved and filed July 2, 1925, omitted in printing.

[fol. 80] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—July 11, 1925

This cause coming on to be heard upon the motion of the defendants for an extension of time for the preparation of and filing of the transcript of record in said case in the Supreme Court of the United

States and for good cause shown, it is ordered by the Court that the time for preparing transcript of record herein and for filing and docketing the same in the United States Supreme Court, be, and the same is hereby extended for a period of thirty days from and after this date, to and including August 10th, A. D. 1925.

[fol. 81] Citation, in usual form, showing service on Cutting, Moore & Sidley et al., filed June 8, 1925, omitted in printing.

[fol. 82] Clerk's certificate to transcript of record from District Court omitted in printing.

[fol. 83] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION BY APPELLANTS OF PARTS OF RECORD TO BE PRINTED—Filed August 11, 1925

And now come the Appellants in the above entitled cause, and file the following as a statement of the points upon which they intend to rely on appeal from the Order overruling motion of appellants to dismiss the Bill of Complaint and from the final decree entered against said appellants:

1. The District Court erred in overruling the motion of appellants to dismiss the Bill of Complaint herein.
2. The District Court erred in granting the perpetual injunction herein against appellants.
3. The District Court had no jurisdiction of this case for the reason that the allegations in the Bill of Complaint do not show that the State of Illinois was confiscating, or had confiscated, or was about to confiscate, the property of the appellee, in violation of the Fourteenth Amendment to the Constitution of the United States.
4. The Bill of Complaint shows that the appellee or its predecessor has not exhausted its legislative remedies under the laws of the State of Illinois, which it should have done before applying to the District Court for relief.

[fol. 84] 5. The District Court erred in decreeing that the appellants and each of them, and all other persons, be permanently restrained and enjoined from taking any steps or proceedings against appellee, its officers, agents or employees, to enforce any penalties, fines, forfeitures, or any other remedy, either under any statute or otherwise, by reason of the charging and collecting by appellee of

higher rates and charges for telephone service in appellee's said Peoria Exchange than in said Schedule I. P. U. C. No. 1, provided.

6. The District Court did not have jurisdiction of the subject matter and all of the parties to this cause.

7. The District Court erred in entering the final decree herein, whereby the fifteen thousand (15,000) or more subscribers of appellee, affected by the increase of rates allowed by the court, and who were not made parties to this suit, were enjoined from instituting or prosecuting any proceedings or taking any steps with reference to protecting their rights in connection with the increase of rates.

8. The Final Decree granting a permanent injunction entered in said cause, is inequitable and unjust.

And the appellants hereby designate the following parts of the record, which they deem necessary and advisable for the consideration of the points relied upon as above set forth.

1. Bill of Complaint, and all Exhibits and Affidavits accompanying same.

2. The Original Motion of Appellants to Dismiss the Bill of Complaint.

3. The Amended Motion to dismiss the Bill of Complaint.

4. The Orders overruling said Motions.

5. The Final Decree.

Oscar E. Carlstrom, Attorney General of Illinois; R. H. Radley, Shelton T. McGrath, Harry C. Heyl, Attorneys for Appellants.

[fols. 85 & 86] Received a true and correct copy of the foregoing statement of points relied upon by appellants, and designation of parts of record to be printed, this 6th day of August, A. D. 1925.

Cutting, Moore & Sidley, Wm. D. Bangs, Philip Barton Warren, Attorneys for Illinois Bell Telephone Company, a Corporation, Appellee.

[fol. 87] [File endorsement omitted.]

[fols. 88 & 89] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION BY APPELLEE OF ADDITIONAL PARTS OF RECORD TO BE
PRINTED—Filed August 26, 1925

And now comes the appellee in the above entitled cause and designates parts of the record in said cause, in addition to those parts designated by appellants, which it deems material to the consideration of said cause, to-wit:

All orders of the District Court and Statutory Court, including the orders granting the temporary restraining order and interlocutory injunction.

Cutting, Moore & Sidley, William D. Bangs, Philip Barten Warren, Attorneys for Appellee.

[fol. 90] [File endorsement omitted.]

Endorsed on cover: File No. 31,393. S. Illinois D. C. U. S. Term No. 670. Frank L. Smith, Cicero L. Lindley, Hal W. Trovillion, et al., &c., Appellants, vs. Illinois Bell Telephone Company. Filed August 11th, 1925. File No. 31,393.

(8658)